

EXHIBIT 14

1 IN THE UNITED STATES DISTRICT COURT

2 MIDDLE DISTRICT OF FLORIDA

3 TAMPA DIVISION

4
5 REBOTIX REPAIR, LLC

6 Plaintiff,

7 vs.

Case No. 8:20-CV-02274

8 INTUITIVE SURGICAL, INC.,

9 Defendant.

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11
12
13 REMOTELY CONDUCTED

14 VIDEOTAPED DEPOSITION OF ANTHONY McGROGAN

15 Sunnyvale, California (Witness's location)

16 Monday, June 7, 2021

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21 Stenographically reported by:
LORRIE L. MARCHANT, RMR, CRR, CCRR, CRC
22 California CSR No. 10523
Washington CSR No. 3318
23 Oregon CSR No. 19-0458
Texas CSR No. 11318

24
25 Job No. 194226

1 A. Yes.

2 Q. And you're aware that hospitals, they
3 regularly evaluate instruments after surgeries and
4 see whether it needs repairs or tweaking or anything
5 like that; right?

6 A. There -- there is no repair process for our
7 instruments that I'm aware of.

8 What -- what was the other word that you
9 used? "Tweaking"?

10 Q. Well, so that wasn't -- wasn't quite my
11 question. I meant not specific to EndoWrists.

12 I mean, generally, when hospitals use
13 instruments, they examine them and see whether
14 they've broken or whether they need to be fixed;
15 right?

16 MR. RUBY: Well, I'll object to the form of
17 the question.

18 For one thing, what hospitals generally do
19 is not one of the topics that is a 30(b)(6) topic
20 for anybody, as far as I know.

21 And, secondly, it's incomplete.

22 But, Mr. McGrogan, you may, if you can, go
23 ahead and answer the question.

24 THE WITNESS: I only know what they do with
25 our instruments. I can't speak to what happens to

1 other instruments in the hospital.

2 BY MR. ERWIG:

3 Q. I want to talk to you a little bit about
4 how the usage limits -- withdrawn.

5 I want to talk to you a little bit how the
6 life counter's original lives for instruments are
7 originally set. Okay?

8 A. Okay.

9 Q. Now, when Intuitive is first considering
10 what it's going to be setting the lives at,
11 marketing is involved in that process; right?

12 A. Marketing is involved to the extent that
13 they set goals for engineering.

14 Q. For example, marketing might set a goal of
15 ten lives for an instrument; right?

16 A. That's an example, yes.

17 Q. And then engineering would try to design an
18 instrument that would meet that ten-life goal;
19 right?

20 A. Yes.

21 Q. Now, if the instrument, in fact, exceeded
22 that ten-life goal, then marketing would have to be
23 involved to see whether the life limit should be
24 pushed higher; right?

25 A. I can't think of an example where that's

1 actually happened, so I will have to say that I
2 don't really know what would happen in that case.

3 Q. You can't think of an example where an
4 instrument exceeded the marketing target and then
5 marketing was consulted whether the instrument's
6 lives should be increased?

7 A. I know there are examples where we have
8 exceeded the targets and engineering was consulted
9 on what the target -- the final target should be.
10 But I'm not aware of us exceeding it and asking
11 marketing's opinion on the number. We've only --
12 we've rarely exceeded it.

13 Q. Now, you mentioned that marketing sets
14 a -- withdrawn.

15 When marketing initially sets the target
16 number of lives, how is that process performed?

17 A. I guess it's done -- over the years I've
18 been at Intuitive, it's been done in different ways.

19 Typically, they -- they give us a goal. It
20 can be in the form of a specification document or a
21 product requirements document or a marketing
22 requirements document. Or it can just be through
23 e-mails, informal.

24 Q. And that goal, how is -- how is that
25 determined?

1 A. The marketing goal, you're asking about?

2 Q. Correct.

3 A. I'm not sure. In the cases that -- in the
4 cases that -- you know, in the examples that I've
5 been involved in, engineering helps set that target,
6 but I'm not certain in all cases how it's been done.

7 Q. Well, marketing could, for example, send an
8 e-mail that said, hey, we have a goal of five lives;
9 right?

10 A. Sure.

11 Q. And then engineering would try to design a
12 product that would meet that particular
13 specification; right?

14 A. It could. It's a little more complicated
15 than that.

16 Q. Well, what additional level of complexity
17 am I missing?

18 A. The cost of the instrument, the business
19 case. There's other factors that go into it.

20 Q. When you say "the business case," you mean
21 the revenue from selling instruments with particular
22 lives?

23 A. Or in my case, I don't deal with revenue,
24 per se, but I just deal with cost, what it costs to
25 make an instrument.

1 "yes" or "no" to answer questions.

2 Now, in the second paragraph,

3 Ms. Withrow-Winkler writes:

4 "The benefit of continuing to test is
5 that you get more data points to use for
6 determining the reliability and
7 confidence."

8 Do you see that?

9 A. Yes.

10 Q. Now, continuing to test instruments, one
11 way to perform testing would be to perform testing
12 until each instrument fails; right?

13 A. Yes.

14 Q. In other words, marketing might provide a
15 target of 15 lives, and engineering would then test
16 all instruments to failure to determine how long
17 those instruments might be able to be used for;
18 right?

19 A. Sorry. You cut out there for a little bit
20 of a second. So I'm going to ask you to repeat that
21 one.

22 Q. Sure. Marketing might set a target for 15
23 lives; right?

24 A. Sure. Yes.

25 Q. If instruments were tested to failure, then

1 each instrument would be tested until it experienced
2 a failure condition; right?

3 A. Yes.

4 Q. And that could happen at 20 uses; right?

5 A. Yes.

6 Q. It could happen at 25 uses?

7 A. Yes.

8 Q. It could happen maybe even at 30 uses?

9 A. Yes.

10 Q. The instruments, though, they aren't tested
11 to failure; right?

12 A. We don't -- we have to be careful when we
13 use that term "tested to failure." So let's just be
14 clear what we mean by that.

15 What do you mean when you say "the
16 instruments are not tested to failure" in your
17 question to me?

18 Q. Well, if you don't understand the question,
19 you can ask me to rephrase it. But, regrettably, I
20 can't --

21 A. I just want to understand the term or your
22 understanding of the term and what you mean by
23 "tested to failure."

24 Q. Well, in this e-mail, Ms. Withrow-Winkler
25 writes that she's told the lab to stop testing;

1 right?

2 A. Yes.

3 Q. Now, telling the lab to stop testing
4 instruments at a certain point, that could involve
5 telling the lab to stop testing instruments once
6 they've reached 17 uses, for example; right?

7 A. Yes.

8 Q. Another option would be not to set any stop
9 point for the instruments; right?

10 A. Yes.

11 Q. In other words, continuing to test the
12 instruments until they exhibit failure conditions;
13 right?

14 A. Yes.

15 Q. In this particular testing, the instruments
16 were stopped at a certain point; right?

17 A. Yes.

18 Q. The testing was not performed all the way
19 through to failure; right?

20 A. Yes.

21 Q. Now, an alternative approach for -- well,
22 withdrawn.

23 MR. ERWIG: I'm going to stop
24 screen-sharing this exhibit.

25 We've been going just under an hour, but I

1 think I'm at a good point for a break. So let's go
2 off the record.

3 THE VIDEOGRAPHER: The time is 10:02 a.m.,
4 and we are now off the record.

5 (Recess taken from 10:02 to 10:11.)

6 THE VIDEOGRAPHER: The time is 10:11 a.m.,
7 and we are back on the record.

8 MR. ERWIG: I'm going to screen-share our
9 next exhibit. This will be Plaintiff's Exhibit 4.

10 (Marked for identification purposes,
11 Exhibit 4.)

12 BY MR. ERWIG:

13 Q. Screen-share this with you.

14 Do you see this on the screen in front of
15 you?

16 I believe you're on mute, Mr. McGrogan.

17 A. Apologies. Yes. I'm off mute, and I see
18 the document.

19 Q. Great. I'm going to start going over this
20 e-mail chain.

21 Who is Disha Peswani?

22 A. She's a program or project manager at
23 Intuitive Surgical.

24 Q. "Life extension testing," does that refer
25 to the proposed increase in lives on the usage